

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 828 of 1993

with

CRIMINAL APPEAL No 1080 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS

and

Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

RAMESH BHALABHAI CHAVDA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 828 of 1993
MR DEEPAK M SHAH for Petitioner No. 1
THROUGH JAIL for Petitioner No. 1
MR HH PATEL,APP for Respondent No. 1
 2. Criminal Appeal No. 1080 of 1993
MR HH PATEL,APP for Petitioner No. 1
NOTICE NOT RECD BACK for Respondent No. 1
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CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE AKSHAY H.MEHTA

Date of decision: / 2002

CAV JUDGEMENT

(Per : MR.JUSTICE KSHITIJ R.VYAS)

1. The appellant Rameshbhai Bhulabhai Chavda, in Criminal Appeal No.828 of 1993, has challenged the judgment and order dated 17.5.1993 passed by the learned Addl. Sessions Judge, Rajkot in Sessions Case No. 74 of 1992 convicting him for offences punishable under sections 302 and 307 of IPC and sentencing him to suffer R.I. for life and to pay a fine of Rs. 500/-, in default, to undergo S.I. for six months for offence punishable under section 302 of IPC. However, no separate sentence for offence punishable under section 307 of IPC was passed.

2. State of Gujarat has filed Criminal Appeal No. 1080 of 1993 for enhancement of sentence as according to the State, the sentence of R.I. for life is inadequate considering the offence committed by the accused and the accused deserves to be inflicted an extreme penalty of death.

3. The incident in question took place on 4.6.1992 at about 3.00 p.m. in Ambedkarnagar area of the City of Rajkot when the appellant committed most heinous crime of tying his three children by a saree and setting them ablaze after pouring kerosene on them. One son Dhiru fortunately escaped. The incident was witnessed by Valjibhai Bhalabhai Gohel, PW 6 Ex. 31 and his mother Kaliben Danbhai, PW 5 Ex.30. Both of them ran to the place of brick field where the wife of the appellant Kankuben, PW 7 Ex. Ex.32 was working. All the three children received serious burn injuries and, therefore, initially, they were taken in a rickshaw and then in an ambulance, to the hospital. The appellant who also sustained certain burn injuries on his hand as well as on the abdomen was also removed to hospital. The information conveyed by Duty Police Constable in the hospital Navinchandra Balashanker, PW 22 Ex. 66 was taken down by Shivram, PW 20 Ex.53 in station diary and he also informed PSI Jayant Vasava, PW 25 Ex. 71 of Rajkot Taluka Police Station to investigate the case. PSI Vasava recorded complaint Ex. 72 of Gorabhai Vankar, PW 4 Ex.29 in the hospital. All the three children, one by one, died in the same afternoon. PSI Vasava

thereafter started usual investigation including recording of statements of witnesses and also sought the services of P.D.Vaghela, SDM and Executive Magistrate, Rajkot to record the dying declaration Ex. 86 of the appellant which was recorded at 0.35 hours on 5.6.1992. After completion of investigation, on the basis of sufficient evidence against the appellant, chargesheet was filed against the appellant before the learned Magistrate, Rajkot. The learned Magistrate ultimately committed the case to the Court of Sessions at Rajkot for trial.

4. Charge Ex. 1 was framed against the appellant. The same was denied by him and he claimed to be tried. By way of further statement under section 313 of the Code of Criminal Procedure, the appellant filed his written reply Ex. 94 wherein while claiming innocence, he has inter alia alleged that he was severely beaten by his three brothers-in-law, namely Nathu, Mulji and Gora Dana on 4.6.1992 and his wife poured kerosene on him and ignited a match stick and threw at him with the result he sustained burn injuries. His brother-in-law Mulji inflicted injury on his head with an iron rod. He was almost in a semiconscious condition. He stood there in burning and semiconscious condition and at that time, his elder daughter Bharti carrying his youngest son Pradip and other daughter Parul, while crying embraced him. Even though he tried to remove them, he could not do so and all the three children, therefore, sustained burn injuries. He has denied to have tied them by a saree and having sprinkled kerosene and set them ablaze. He has admitted the dying declaration given by him on the night of 5.6.1992. According to him, his children died an accidental death since they had affection for him, they embraced him and in the process, they received fatal burns. He requested to initiate proceedings against his wife and his brothers-in-law. He also made allegations against the concerned Investigating Officer. Regarding the evidence of prosecution witnesses, he has stated that they had deposed against him at the instance of police.

5. The learned trial judge, after appreciating the evidence on record, gave a finding that the prosecution had established that all the three children died a homicidal death. The learned trial judge also held that the prosecution had established that the appellant had poured kerosene on his three children and by setting them ablaze, caused burn injuries resulting into death of his three children, and convicted and sentenced the appellant as stated above.

6. Dr. Kishor Rawal, PW 1 Ex. 14, Medical Officer of Civil Hospital, Rajkot who performed the post-mortem of deceased Pradip, has opined that the cause of death was shock due to extensive burns to the body. Similarly, Dr. Rajendra Pandya, PW 2 Ex.19, Medical Officer of Civil Hospital, Rajkot who performed autopsy of deceased Bharti and Parul opined that both of them died due to shock as a result of extensive burn injuries.

7. Learned Counsel appearing for the appellant has not challenged the death of three children as being a homicidal death and he has accepted the said findings of the learned trial judge. Therefore, it is not necessary for us to refer to the medical evidence. We, however, confirm the finding of the learned trial judge by holding that all the three children of the appellant died a homicidal death. The only question to be decided in this appeal is the involvement of the appellant in the commission of crime.

8. Mr. D.M.Shah, learned Counsel for the appellant has taken us through the entire evidence on record and submitted that the evidence in the instant case which mainly consists of the relatives is required to be discarded as they are interested witnesses. In the submission of learned Counsel, in view of serious allegations made against the prosecution witnesses by the appellant coupled with the fact that the appellant himself sustained injuries, the defence as suggested by the appellant, is quite natural and consistent with his innocence.

9. Mr. H.H.Patel, learned APP on the other hand, while supporting the judgment of the trial court, has submitted that the appellant has committed most heinous crime by burning alive his three children and, therefore, he deserves no sympathy and he should be dealt with strictly. He, therefore, prayed for enhancement of sentence.

10. The prosecution, in order to bring home the charge against the appellant, has mainly relied upon the evidence of eye witnesses and supporting witnesses. It is true that the witnesses who have deposed against the appellant are relatives and the appellant has also alleged that they are all interested witnesses; however, merely because the prosecution witnesses are relatives, their evidence cannot be discarded, but it only requires close scrutiny. We, therefore, discuss the evidence of prosecution witnesses one by one.

11. Gorabhai Danbhai, PW 4 Ex.29 is the complainant who is the brother-in-law of the appellant. He, in his evidence, has stated that he is residing in Amedkar Nagar, Behind ST Workshop, Rajkot. He is doing labour work. His family consists of four brothers and two sisters. The name of the elder sister is Kaliben (PW 5 Ex.30). The name of the younger sister is Kankuben who married to the appellant 8 to 10 years prior to the date of incident. They were residing in Amedkarnagar. He has further stated that the appellant has four children; namely daughters Bharti aged 8 years, Parul aged 6 years, son Dhiru aged 5 years and son Pradip aged 2 years. On the date of the incident i.e. on 4.6.1992, he and Kankuben were working in the brick field of his brother Mulji. His sister Kali came at about 3.00 p.m. and informed that the appellant burnt his children. They all thereafter went home and found that the children were burnt and were wreathing in pain. According to him, when he went to the house of the appellant, his brother Mulji, PW 11 and Savita, PW 8 also came there. All the three children were thereafter removed to the Govt. Hospital, initially in a rickshaw and then by ambulance. According to him, the appellant was in the house and was dashing his head against wall. According to him, his brother-in-law i.e. the appellant was later on removed to hospital in the vehicle of fire brigade. All the three children died in the hospital. The clothes of fourth son Dhiru smelt of kerosene. According to him, the appellant was not doing any work. He thereafter lodged his complaint. In the cross examination, he has admitted that he was not present at the time of the incident. He has also admitted that he had not seen his brother-in-law causing burn injuries to the children. He has pleaded ignorance about the quarrel having taken place between his sister Kankuben and the appellant. He has denied that on the day of the incident, quarrel, in fact, had taken place between them. He has stated that his sister Kali was residing with his brother Nathu in the adjoining street nearer to the house of the appellant. He has denied the suggestion that when they reached the house of the appellant, the appellant was in unconscious condition. According to him, the appellant was dashing his head against wall.

From the evidence of the complainant, it is clear that he had not seen the incident. However, he came to know only when his sister Kali came there at about 3.00 p.m. and informed him about the incident.

12. Kankuben Danabhai, PW 7 Ex. 32, the wife of the appellant has almost given similar version. According to

her, she had gone to the brick field of her brother Mulji in the morning for doing work. She, however, returned back at about 12.00 o'clock. At that time, her husband i.e. the appellant was there. After taking lunch, she again went at about 2.00 p.m. According to her, there was no talk with her husband when she was at home. According to her, her sister's son Valji, PW 6 Ex.31 came with his mother Kali to the brick field and informed that her children were burnt alive. They, therefore, returned home and saw that the children were in seriously burnt condition. She has further stated that her husband was at home and he was banging his head against wall. She did not know what had happened to him. All the three children were thereafter removed to the hospital, but they did not survive. She has stated that her three children were burnt by their father. In the cross examination by defence, this witness has stated that it was true that she had not actually witnessed the incident, but she was stating the facts after knowing them from someone else. She has also admitted that in the statement before police, she had not stated that her brothers and sister Hansa took all the three children in rickshaw to Govt. Hospital, but she has stated that it was her three brothers who had taken the children to the hospital and her sister Hansaben had gone to make a phone call for ambulance. She has denied the suggestion that on the day of incident in the morning, there was a quarrel between her and her husband. She has also stated that there was no physical fight between her brothers and her husband. She has stated that at the brick field, her sister Kali and Kali's son Valji had come to inform her about the incident. She has denied the suggestion that her brothers had gone to burn Ramesh i.e. the appellant and while the appellant was set ablaze, her children embraced him and in the process, they also received burn injuries.

13. Savitaben Haribhai, PW 8 Ex. 33 is the sister-in-law of Kankuben. She has stated in her evidence that the appellant was not doing any job and for that reason, there used to be quarrels between husband and wife. She has further stated that on 4.6.1992, while they were at the brick field, her sister-in-law's daughter came to call them and she informed the witness that the appellant had set ablaze the children. On receiving the news, the witness and others went to the house of the appellant and there they saw three children, namely Bharti, Parul and Pradip in severely burnt condition. They also noticed that Dhiru had gone away from there and later on, he informed the witness and others that it was their father who had tied them with a

saree and sprinkled kerosene over them. In the cross examination, she has admitted that she had not personally seen the incident, but she was stating from what she had heard from Kaliben and Valji. She has further stated that when he went to the house of the appellant, he saw that the appellant was banging his head on the wall. She has denied the suggestion by the defence that she was giving false evidence because Kankuben happened to be her sister-in-law.

14. Hansaben Bhalabhai, PW 9 Ex.34 and Hemiben Dayalji, PW 10 Ex.35 are examined by prosecution to support its case, but they have turned hostile and they have not supported the prosecution. It is, therefore, not necessary to discuss their evidence in detail.

15. Mulji Danabhai, PW 11 Ex. 36 is the brother of Kankuben. He has stated in his evidence that the appellant was not doing any work and, therefore, often, there used to be quarrel between husband and wife. He has further stated that on 4.6.1992, in the afternoon, while they were in the brick field, his nephew Valji and his elder sister Kaliben came there and they asked the witness to rush immediately as the appellant had burnt the children. On receiving the news, the witnesses and others went running to the place of the appellant and they saw three children, namely Bharti, Parul and Pradip in burnt condition. They also saw the appellant banging his head against the wall. This witness and his elder brother Gorabhai took the children in rickshaw to hospital and at the hospital, the children died one after the other during treatment. He stated that he later on did not go to the hospital. In the cross examination, the defence has not elicited anything from his evidence.

16. The prosecution has also examined Viruben Naranbhai, PW 12 Ex.37, Chamanlal Arjanbhai, PW 13 Ex.38, Pravin Nanji, PW 14 Ex.40, Dilip Shivilal, PW 15 Ex.42. All of them have turned hostile and have not supported the prosecution. It is, therefore, not necessary to discuss their evidence in detail.

17. Ambalal Mavjibhai, PW 17 Ex.48 has acted as a panch to the scene of offence. He has stated that after inspecting the place, detailed panchanama was drawn regarding scene of offence and whatever incriminating articles were found from the place were seized by the police.

18. Shivram Krishnabhai, PW 20 Ex. 53 was working as Head constable and on 4.6.1992, he was PSO In-charge of

Taluka Police Station. He received 'wordi' from the hospital that three children namely Bharti, Nani Baby and Munno had received serious burn injuries and they were brought to the hospital. He, therefore, noted down the information in his station diary which has been produced on record at Ex. 54. After making entry, he entrusted investigation to PSI JB Vasava. He also subsequently received information with regard to death of children and he accordingly made necessary entries in the station diary. In the entry in station diary Ex. 54, it has been stated that the appellant, after consuming liquor, had burnt Bharti, Guddi and youngest son (Nano Babo) and in the process of putting off the fire, the appellant had also received burn injuries and all of them were admitted in the hospital.

19. The prosecution has also examined police personnel with a view to establish the relevant entries made in the hospital as well as in the police station, but since their evidence does not take the prosecution case any further, it is not required to be discussed in detail.

20. Jayantibhai Becharbhai Vasava, PW 25 Ex. 71, at the relevant time, was working as Police Inspector in Rajkot Taluka Police Station. He is the main Investigating Officer in the present case. He has stated that after recording complaint of Goara Dana on 4.6.1992, he commenced investigation of the case. In the course of investigation, he drew inquest panchanama, panchanama of the scene of offence, panchanama of various incriminating articles including clothes put on by Dhiru who survived, recorded statements of various persons acquainted with the facts of the case and arranged to get done the post-mortem of the dead bodies of children and at the end of the investigation, before chargesheet could be submitted, he handed over charge of investigation to Chandravadan Prabhulal Dalal, PW 24 Ex. 70 who submitted chargesheet in the Court of concerned Magistrate on 2.7.1992. In the cross examination of this witness, an attempt has been made by the defence to show that it was not the appellant, but his wife Kanku who had actually sprinkled kerosene over three children and had set them ablaze and he had received burns while he was trying to save the children. This witness has been extensively cross examined by the defence, but the defence has not been able to make any dent in the case of the prosecution.

21. Considering the aforesaid evidence, it clearly emerges that on the day of incident, the appellant, in a

state of frustration, after consuming alcohol, tied all his four children with a saree and sprinkled kerosene over them with a view to set them ablaze. Fortunately, son Dhiru managed to escape. The other three children were not that fortunate and they became victim of the wrath of the appellant. The prosecution has clearly established that these innocent children were mercilessly set to fire by their own father. This incident has been witnessed by the eye witnesses whose evidence is already discussed above. There is nothing in their evidence which may dissuade us from accepting their version regarding the incident. The eye witnesses and other supporting witnesses have no reason to falsely involve the appellant in such a serious case. Though the defence has made an endeavour to throw the entire blame on Bai Kanku and her brothers, it has hopelessly failed even in creating a shadow of doubt. Bai Kanku, at the relevant time, was not at all present at the scene of offence. She was working at the brick field. It was in the afternoon the incident took place when other persons including Kankuben were working in the brick field and she was not at home. She was informed about the incident by her sister Kali and on receiving the said information, Kankuben went home and saw the aftermath of the incident. It is also to be kept in mind that Kankuben herself was working in the brick field and earning some amount for the maintenance of her family. She and her brothers, therefore, had no grudge against the children. The defence has also tried to suggest that on account of the fact that the appellant was not doing any work and was not earning any livelihood for the family and was squandering away what was earned by Kankuben by consuming liquor, often there used to be quarrel between the husband and wife and taking the side of Kankuben, her brothers and she tried to do away with the appellant by setting him on fire and the children received burns as they embraced the appellant with a view to save him. This version also cannot be accepted in light of what has already come in the evidence before the Court. There is not a single piece of evidence which would go to suggest that it was the brothers of Kankuben and Kankuben herself who had created the trouble. On the contrary, there is ample, reliable and unimpeachable evidence on record to show that it was the appellant who was responsible for this gruesome incident. The evidence of eye witnesses when compared with the contemporaneous documents which came into existence almost immediately after admission of children in the hospital in the form of police record, gives a clear picture that there was no variance in the version of eye witnesses and what was recorded therein and which has been produced as documentary evidence in

the trial. The prosecution has not even remotely suggested that the Investigating Officer has concocted all these documents to falsely involve the appellant in this case. As could be seen from the extract of police station diary which is produced on record at Ex. 54, the appellant is stated to be the person responsible for setting ablaze three children. This entry is followed by several other entries which also make it eloquent that it was the appellant who was the real culprit. We, therefore, have no hesitation in holding that it is the appellant alone who is responsible for committing murder of his three children, namely Bharti, Parul and Pradip and the finding recorded by the trial court in this behalf is absolutely proper and legal. We, therefore, do not see any reason to disturb the conclusion reached by the trial court holding the appellant guilty of committing offence punishable under section 302 of the IPC.

22. It is also in evidence that at the time just before setting ablaze the children, the appellant had tied all the four children including Dhiru with a saree and had sprinkled kerosene over them with a view to commit their murder. It was only because of the grace of God that Dhiru could manage to get himself freed and escape. The appellant, however, had all the intentions to kill him, but Dhiru had survived only because of intervening circumstances beyond the control of the appellant. We, therefore, are in agreement with the trial court on the question of holding the appellant responsible for committing offence under section 307 of IPC. For that reason, we do not intend to disturb the findings given by the trial court holding appellant guilty of offence punishable under section 307 of IPC. We, therefore, hold that the judgment and order of conviction recorded by the trial court of the appellant for offences punishable under section 302 and 307 of IPC is just and proper and it does not require any interference at our hands.

23. The State has filed Criminal Appeal No. 1080 of 1993 under section 377 of the Code of Criminal Procedure for enhancement of sentence imposed by the trial court. We, therefore, now turn our attention to the question of adequacy of sentence imposed by the trial court.

The trial court, after taking into consideration various circumstances, has thought it fit to impose sentence of R.I. for life. The trial court, after taking into consideration the age of the appellant at the time of imposition of sentence, has awarded him sentence

of life imprisonment in spite of the fact that it was a fit case for awarding the capital punishment.

24. Having given careful consideration to this question, we feel that there is no need to enhance the sentence of life imprisonment awarded by the trial court and to award capital punishment to the appellant. It is by now a well settled principle of law that a person who has undergone sufferings of his uncertain fate and has consistently remained under a hanging sword for number of years, is not required to be visited with capital punishment. In the instant case, the date of sentence of life imprisonment is 17.5.1993 and, therefore, it is not proper for us to disturb the sentence imposed by the trial court, in the year 2002. The appellant has undergone sufficient sufferings of the nature stated above. Therefore, there is no need to interfere on the question of sentence in this appeal.

25. In the result, both Criminal Appeal No. 828 of 1993 as well as Criminal Appeal No. 1080 of 1993 are dismissed. Muddamal to be disposed of in terms of the directions given by the trial court.

(Kshitij R.Vyas,J.)

(Akshay H.Mehta,J.)

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